

Crimes of Violence Committed Against Federal Officials or Employees: A Brief Overview of Federal Criminal Law

Updated May 31, 2011

Congressional Research Service

<https://crsreports.congress.gov>

R41574

Summary

Dozens of federal statutes outlaw homicide, assault, and threats under varying jurisdictional circumstances. Those which appear most relevant to tragic events in Tucson, AZ, are identified in abbreviated form here.

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Introduction

Recent tragic events in Tucson, AZ, have raised questions about the extent to which federal law outlaws crimes of violence committed against federal officials or federal employees.¹

More than a few outlaw such conduct. Murder or assault committed anywhere in the United States is outlawed in the law of the state in which it occurs. Notwithstanding any state prosecution, however, a number of federal laws outlaw crimes of violence committed under various federal jurisdictional circumstances, including but not limited to the fact that crime is committed against a Member of Congress, a federal judge, the President, or a federal employee. The more prominent of these, with particular attention to the events in Tucson, are mentioned briefly below.

Homicide

The federal homicide and related statutes include:

18 U.S.C. 351(a) (killing a Member of Congress, certain senior executive officials, Justices of the Supreme Court, a Presidential or Vice Presidential candidate, or nominee to the Supreme Court)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

Voluntary manslaughter—imprisonment for not more than 15 years, 18 U.S.C. 1112

Involuntary manslaughter—imprisonment for not more than 8 years, id.

attempted murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 351(c)

conspiracy to commit murder—imprisonment for any term of years or for life, 18 U.S.C.

351(d)(or death, if death results)

18 U.S.C. 1751(a) (killing the President, Vice President, an official serving as President, or certain senior executive officials)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

¹ On January 9, 2011, the Justice Department filed a preliminary criminal complaint charging Jared Lee Loughner with attempting to kill a Member of Congress and of killing and attempting to kill federal officers and employees in the performance of their official duties in violation of 18 U.S.C. 351(c), 1114, 1111, and 1113, U.S. Department of Justice, *Federal Complaint Filed Against Jared Lee Loughner*, available at <http://www.justice.gov/opa/pr/2011/January/11-022.html>.

Mr. Loughner was initially indicted for attempting to murder a Member of Congress and for attempting to murder federal employees in the performance of their duties, U.S. Dept. of Justice, *Jared Lee Loughner Indicted*, available at <http://www.justice.gov/opa/pr/2011/January/11-072.html>.

A subsequent, superseding 49-count indictment charged him with attempting to kill a Member of Congress (18 U.S.C. 351(c)); attempting to murder a federal employee (18 U.S.C. 1114); use of a firearm in relation to a crime of violence (18 U.S.C. 924(c)(1)(A)); murder of a federal employee (18 U.S.C. 1114); causing a death through the use of a firearm (18 U.S.C. 924(j)(1)); causing the death of participants in a federally provided activity (18 U.S.C. 245(b)(1)(B)); and injuring participants in a federally provided activity (18 U.S.C. 245(b)(1)(B)), U.S. Attorney (D. Ariz.), *Jared Lee Loughner Charged for Multiple Murders, Attempted Assassination*, available at http://www.justice.gov/usao/az/press_releases/2011/PR_03042011_Loughner_SupersedingIndictment.pdf.

Voluntary manslaughter—imprisonment for not more than 15 years, 18 U.S.C. 1112

Involuntary manslaughter—imprisonment for not more than 8 years, id.

attempted murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1751

conspiracy to commit murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1751 (or death, if death results)

18 U.S.C. 1114 (killing a federal officer or employee (including a federal judge² or a member of the armed forces) during or on account of the performance of their duties or someone during or on account of assistance provided such officers or employees)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

Voluntary manslaughter—imprisonment for not more than 15 years, 18 U.S.C. 1112

Involuntary manslaughter—imprisonment for not more than 8 years, id.

attempted murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1114

conspiracy to commit murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1117

18 U.S.C. 930(c) (a use of firearm or dangerous weapon in federal facility to kill another)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

Voluntary manslaughter—imprisonment for not more than 15 years, 18 U.S.C. 1112

Involuntary manslaughter—imprisonment for not more than 8 years, id.

attempted murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1113

conspiracy to commit murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1117

18 U.S.C. 115 (murder of a former federal official or employee or the family member of a current or former federal official or employee, in order to influence, impede, or retaliate against such current or former federal official or employee)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

attempted murder—imprisonment for any term of years or for life, 18 U.S.C. 1113

conspiracy to commit murder—imprisonment for any term of years or for life, 18 U.S.C. 1117

18 U.S.C. 1111, 1112, 1113, 1117 (homicide within the special maritime or territorial jurisdiction of the United States (including U.S. overseas facilities and residences when committed by or against a U.S. national, 18 U.S.C. 7(9)) also applicable when committed overseas by those serving in, accompanying, or employed by the U.S. armed forces, 18 U.S.C. 3261)

Penalties: 1st degree murder—death or imprisonment for life or any term of years, 18 U.S.C. 1111

2d degree murder—imprisonment for life or any term of years, id.

Voluntary manslaughter—imprisonment for not more than 15 years, 18 U.S.C. 1112

² See, e.g., *United States v. Harrelson*, 754 F.2d 1153 (5th Cir. 1985).

Involuntary manslaughter—imprisonment for not more than 8 years, *id.*
attempted murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1113

conspiracy to commit murder or manslaughter—imprisonment for any term of years or for life, 18 U.S.C. 1117

18 U.S.C. 924(c) (use of a firearm during and in furtherance of a federal crime of violence)

Penalties: firearm is possessed—imprisonment for not less than 5 years to be served consecutive to the sentence imposed for the crime of violence, 18 U.S.C. 924(c)
firearm is brandished—imprisonment for not less than 7 years to be served consecutive to the sentence imposed for the crime of violence, *id.*

firearm is discharged—imprisonment for not less than 10 years to be served consecutive to the sentence imposed for the crime of violence, *id.*

second & subsequent convictions—imprisonment for not less than 25 years to be served consecutive to the sentence imposed for the crime of violence and any initial or subsequent conviction for use of a firearm during and in furtherance of a federal crime of violence, *id.*

There are dozens of other federal homicide provisions. Many involve either a violation of some lesser offense where death results or a homicide committed against a federal employee in relation to enforcement of a particular federal law.³

Assaults

The federal assault statutes include:

18 U.S.C. 351(e) (assaulting a Member of Congress, certain senior executive officials, Justices of the Supreme Court, a Presidential or Vice Presidential candidate, or nominee to the Supreme Court)

Penalties: committed with a dangerous weapon or if personal injury results—imprisonment for not more than 10 years
otherwise—imprisonment for not more than 1 year

18 U.S.C. 1751(e) (assaulting the President, Vice-President, an official serving as President, or certain senior executive officials)

Penalties: committed with a dangerous weapon or if personal injury results—imprisonment for not more than 10 years
otherwise—imprisonment for not more than 1 year

18 U.S.C. 1114 (assaulting a federal officer or employee (including a federal judge or a member of the armed forces) during or on account of the performance of their duties or someone during or on account of assistance provided such officers or employees)

Penalties: committed with a dangerous weapon or if personal injury results—imprisonment for not more than 20 years
resulting in physical contact or committed with intent to commit another felony—

³ *E.g.*, 8 U.S.C. 1324 (alien smuggling where death results); 15 U.S.C. 1825 (killing officers during or because of the performance of their duties relating to the protection of horses in various exhibitions and auctions); 18 U.S.C. 36 (drive-by shooting where death results); 18 U.S.C. 229 (chemical weapons offense where death results); see also 18 U.S.C. 1512, 1513 (obstruction of justice).

imprisonment for not more than 8 years
otherwise—imprisonment for not more than 1 year

18 U.S.C. 115 (assaulting a former federal official or employee or the family member of a current or former federal official or employee, in order to influence, impede, retaliate against such current or former federal official or employee)

Penalties: committed with a dangerous weapon or if personal injury results—imprisonment for not more than 10 years
otherwise—imprisonment for not more than 1 year

18 U.S.C. 113 (assault within the special maritime or territorial jurisdiction of the United States—including U.S. overseas facilities and residences when committed by or against a U.S. national, 18 U.S.C. 7(9)—also applicable when committed overseas by those serving in, accompanying, or employed by the U.S. armed forces, 18 U.S.C. 3261)

Penalties: with intent to murder—imprisonment for not more than 20 years
assault with intent to commit any other felony—imprisonment for not more than 10 years
assault with intent to harm and with a dangerous weapon—imprisonment for not more than 10 years
assault resulting in serious bodily injury—imprisonment for not more than 10 years
assault resulting in substantial bodily injury of a child under 16 years of age—imprisonment for not more than 5 years
simple assault under 16 years of age—imprisonment for not more than 5 years
otherwise—imprisonment for not more than 6 months

18 U.S.C. 924(c) (use of a firearm during and in furtherance of a federal crime of violence)

Penalties: firearm is possessed—imprisonment for not less than 5 years to be served consecutive to the sentence imposed for the crime of violence, 18 U.S.C. 924(c)
firearm is brandished—imprisonment for not less than 7 years to be served consecutive to the sentence imposed for the crime of violence, *id.*
firearm is discharged—imprisonment for not less than 10 years to be served consecutive to the sentence imposed for the crime of violence, *id.*
second & subsequent convictions—imprisonment for not less than 25 years to be served consecutive to the sentence imposed for the crime of violence and any initial or subsequent conviction for use of a firearm during and in furtherance of a federal crime of violence, *id.*

There are dozens of other federal assault provisions. Many involve assaults committed against a federal employee in relation to enforcement of a particular federal law.⁴

Threats

18 U.S.C. 115 (threatening to assault, kidnap, or kill a federal official or employee, a former federal official or employee, or the family member of a current or former federal official or employee, in order to influence, impede, retaliate against such current or former federal official or employee)

⁴ See, e.g., 7 U.S.C. 60 (relating to cotton standards); 16 U.S.C. 1417 (relating to international dolphin conservation); 18 U.S.C. 2114 (mail carriers), 42 U.S.C. 2283 (relating to atomic energy); see also, 18 U.S.C. 1512, 1513 (obstruction of justice).

Penalties: threat to kidnap or kill—imprisonment for not more than 10 years
threat to assault—imprisonment for not more than 6 years

18 U.S.C. 871 (use of the mails to threaten to kill, kidnap, or harm the President, Vice President, or President- or Vice President-elect)

Penalty: imprisonment for not more than 5 years

18 U.S.C. 879 (threatening to kill, kidnap, or harm a candidate for President or Vice President; a former President or Vice President; any member of their immediate families; or any member of the family of a President, of a Vice President, or of a President or Vice President-elect)

Penalty: imprisonment for not more than 5 years

18 U.S.C. 875(c) (transmitting in interstate or foreign commerce a threat to kidnap or injure another)

Penalty: imprisonment for not more than 5 years

18 U.S.C. 876(c) (mailing a threat to kidnap or injure)

Penalty: imprisonment for not more than 5 years (not more than 10 years if the victim is a federal judge or other federal official or employee)

The First Amendment limits criminal proscription of a threat to “true threats.”⁵ There are dozens of federal threat statutes relating to threats under more narrow jurisdictional circumstances.⁶

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⁵ *Virginia v. Black*, 538 U.S. 343, 359 (2003):

[T]he First Amendment also permits a State to ban a “true threat” *Watts v. United States*, 394 U.S. 705, 708 (1969).... “True threats” encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. See *Watts v. United States* at 708 (“political hyperbole” is not a true threat); *R.A.V. v. City of St. Paul*, 505 U.S. [377, 388 (1992)]. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats “protect[s] individuals from the fear of violence” and “from the disruption that fear engenders,” in addition to protecting people “from the possibility that the threatened violence will occur.” *Ibid.* Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.

⁶ See, e.g., 18 U.S.C. 112 (threatening foreign dignitaries); 18 U.S.C. 241 (civil rights conspiracies); 18 U.S.C. 831 (threats to use nuclear weapons); 18 U.S.C. 1512 (obstruction of justice).

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